

Allstate Insulation Company and Asbestos Workers Local No. 6 of Boston, a/w International Association of Heat and Frost Insulators and Asbestos Workers. Cases 1-CA-30472 and 1-CA-30708

October 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed in Case 1-CA-30472 on May 7 and June 9, 1993, and a charge and an amended charge filed in Case 1-CA-30708 on July 13 and August 12, 1993, by the Asbestos Workers Local No. 6 of Boston, a/w International Association of Heat and Frost Insulators and Asbestos Workers, the Union, the General Counsel of the National Labor Relations Board issued a complaint in Cases 1-CA-30472 and 1-CA-30708, against Allstate Insulation Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On September 14, 1993, the Acting Regional Director for Region 1 issued an order consolidating cases. Although properly served copies of the charges, amended charges, complaints, and order consolidating, the Respondent failed to file an answer.

On September 20, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 23, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaints affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaints will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 15, 1993, notified the Respondent that unless an answer was received by close of business on July 22, 1993, in Case 1-CA-30472, a Motion for Summary Judgment would be filed.¹ In the absence of good cause being shown

¹ Although no similar letter was apparently sent to the Respondent regarding Case 1-CA-30708, we find that this does not warrant denying the General Counsel's Motion for Summary Judgment. See *M. Jacobs & Associates*, 312 NLRB No. 13 fn. 1 (Sept. 10, 1993); and *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

for the failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Mattapan, Massachusetts, has been engaged in the installation of insulation to mechanical systems. Annually, the Respondent, in conducting its business operations, purchases and receives at its Mattapan facility products, goods, and materials valued in excess of \$50,000 from other enterprises located within the Commonwealth of Massachusetts, each of which other enterprises had received these goods directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All insulation workers employed by Respondent within the jurisdiction of the Union, excluding guards and supervisors as defined by the Act.

Since in or about 1983, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit, and since that date, the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from September 9, 1991, to August 31, 1993.

At all material times since 1983, based on Section 9(a) of the Act, the Union has been, and is, the exclusive collective-bargaining representative of the unit.

Since January 1993, the Respondent has failed to continue in effect all the terms and conditions of the 1991-1993 contract by failing to remit union dues and failing to make payments to the Union's vacation fund.

Since February 1993, the Respondent has failed to continue in effect all the terms and conditions of the 1991-1993 contract by failing to make payments to the Welfare, Pension, Annuity, and Joint Apprenticeship Funds, as required under the terms and conditions of employment, which subjects are mandatory subjects for the purposes of collective bargaining.

Since about May 19, 1993, the Union, by letter, has requested the information as set forth below:

1. the names of all principals of both companies and the familial relationship, if any, between them;

2. the names, dates and locations of all jobs on which Metroeast services as a subcontractor to Allstate;

3. the names of all Metroeast employees employed on these jobs and number of hours worked by each;

4. description of any work performed by Allstate for Metroeast;

5. the names of any Allstate supervisors who supervised Metroeast employees;

6. copies of any contracts between Allstate and Metroeast; and

7. copies of any certified payrolls submitted by Metroeast and/or Allstate on all jobs performed by Metroeast for Allstate.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about May 19, 1993, the Respondent has failed and refused to furnish the Union with the information requested by it as described above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and Section 2(b) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to the Union's vacation fund and various other fringe benefit funds, we shall order the Respondent to comply with the contract and to make whole the unit employees by making all payments that have not been made, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection*

Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to remit union dues, we shall order the Respondent to remit such dues and to make the Union whole for its failure to do so, with interest as prescribed in *New Horizons*, supra. Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide necessary and relevant information requested by the Union, we shall order the Respondent to provide the information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Allstate Insulation Company, Mattapan, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1991-1993 contract with Asbestos Workers Local No. 6 of Boston, a/w International Association of Heat and Frost Insulators and Asbestos Workers by failing to remit union dues; to make payments to the Union's vacation fund; and to make contractually required payments to fringe benefit funds on behalf of employees in the unit described below:

All insulation workers employed by Respondent within the jurisdiction of the Union, excluding guards and supervisors as defined by the Act.

(b) Failing to provide information which is necessary and relevant to the Union in the performance of its functions as the exclusive representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in effect all the terms and conditions of the 1991-1993 contract by remitting union dues, making payments to the Union's vacation fund, and making contractually required payments to fringe benefit funds on behalf of its unit employees, and make the Union and the unit employees whole for any losses resulting from its failure to do so, as set forth in the remedy section of this Decision and Order.

(b) Provide the Union with the information it requested on May 19, 1993.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Mattapan, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 22, 1993

James M. Stephens,	Chairman
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Dennis M. Devaney,	Member
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John Neil Raudabaugh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1991-1993 contract with Asbestos Workers Local No. 6 of Boston, a/w International Association of Heat and Frost Insulators and Asbestos Workers by failing to remit union dues; to make payments to the Union's vacation fund; and to make the contractually required payments to fringe benefit funds on behalf of employees in the unit described below:

All insulation workers employed by us within the jurisdiction of the Union, excluding guards and supervisors as defined by the Act.

WE WILL NOT fail to provide information which is necessary and relevant to the Union in the performance of its functions as the exclusive representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect all the terms and conditions of the 1991-1993 contract by remitting union dues, making payments to the Union's vacation fund, and making contractually required payments to fringe benefit funds on behalf of our unit employees, and WE WILL make the Union and the unit employees whole for any losses resulting from our failure to do so.

WE WILL provide the Union with the information it requested on May 19, 1993.

ALLSTATE INSULATION COMPANY